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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/901,237	07/09/2001	Paul D. Daly	60426-282; 2000P07905US01	7497
24500	7590	06/06/2005	EXAMINER	
SIEMENS CORPORATION INTELLECTUAL PROPERTY LAW DEPARTMENT 170 WOOD AVENUE SOUTH ISELIN, NJ 08830			CHAU, COREY P	
			ART UNIT	PAPER NUMBER
			2644	

DATE MAILED: 06/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/901,237

Applicant(s)

DALY, PAUL D.

Examiner

Corey P. Chau

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 November 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-17 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5748748 to Fischer et al (hereafter as Fischer).

3. Regarding Claim 1, Fischer discloses an air induction system comprising (Figs. 1, 3, and 5): an air induction body (16); a speaker (44); a control unit in communication with said speaker (Figs. 1, 3, and 5), having at least two modes of noise attenuation signal generation (column 3, lines 43-63); an engine sensor (Fig. 1; column 7, line 58 to column 8, line 5) for communicating engine data to said control unit (Fig. 1); and said control unit for selecting one of said at least two modes of noise attenuation signal generation based on said engine data (the influence can also consist of changing an undesirable oscillation into a desirable oscillation as a function of the operating condition of the vehicle)(column 3, line 43 to column 4, line 28).

4. Regarding Claim 2., Fischer discloses engine data comprises engine load data and engine speed data (Fig. 1; column 4, lines 29-47; column 7, line 58 to column 8, line 5).

5. Regarding Claim 3, Fischer discloses a memory unit storing driving mode information that at least assists said control unit in the selection of one of said at least two modes of noise attenuation signal generation (Figs. 1, 3, and 5).
6. Regarding Claim 4, Fischer discloses said driving mode information comprises data relating at least one mode of noise attenuation to said engine speed data (Figs. 1, 3, and 5).
7. Regarding Claim 5, Fischer discloses said driving mode information comprises data relating at least one mode of noise attenuation to said engine load data (Figs. 1, 3, and 5).
8. Regarding Claim 6, Fischer disclose said driving mode information comprises data relating at least one mode of noise attenuation to said engine load data and said engine speed data (Figs. 1, 3, and 5).
9. Regarding Claim 7, Fischer discloses one of said at least two driving modes comprises a sport-driving mode and one of said at least two driving modes comprises a normal driving mode (column 3, line 43 to column 4, line 28; column 9, lines 29-42).
10. Regarding Claim 8, Fischer discloses an air induction system (Figs. 1, 3, and 5) comprising: an air induction body (16); a speaker (44) disposed adjacent said air induction body (Figs. 1, 3, and 5); a control unit in communication with said speaker (Figs. 1, 3, and 5), having at least two modes of noise attenuation signal generation (column 3, line 43 to column 4, line 28; column 9; lines 29-42); a memory unit storing driving mode information (38) that assists said control unit in the selection of one of said at least two modes of noise attenuation signal generation; an engine speed sensor (20)

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for communicating engine speed data to said control unit; and an engine load sensor (22) for communicating engine load data to said control unit wherein said control unit selects one of said at least two modes of noise attenuation signal generation based on a comparison of said engine speed data and said engine load data and data stored in said memory unit (the influence can also consist of changing an undesirable oscillation into a desirable oscillation as a function of the operating condition of the vehicle)(column 3, line 43 to column 4, line 28).

11. Regarding Claim 9, Fischer discloses said driving mode information comprises data relating at least one mode of noise attenuation to said engine speed data (Fig. 1; column 4, lines 29-47; column 7, line 58 to column 8, line 5).

12. Regarding Claim 10, Fischer discloses said driving mode information comprises data relating at least one mode of noise attenuation to said engine load data (Fig. 1; column 4, lines 29-47; column 7, line 58 to column 8, line 5).

13. Regarding Claim 11, Fischer discloses said driving mode information comprises data relating at least one mode of noise attenuation to said engine load data and said engine speed data (Fig. 1; column 4, lines 29-47; column 7, line 58 to column 8, line 5).

14. Regarding Claim 12, Fischer discloses one of said at least two driving modes comprises a sport-driving mode and one of said at least two driving modes comprises a normal driving mode (column 3, line 43 to column 4, line 28; column 9, lines 29-42).

15. Regarding Claim 13, Fischer discloses a method of noise attenuation comprising: determining engine speed data (20); determining engine load data (22) ; selecting one of at least two modes of noise attenuation signal generation based on the determined

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engine speed data and engine load data; and generating a noise attenuation signal from the selected mode (the influence can also consist of changing an undesirable oscillation into a desirable oscillation as a function of the operating condition of the vehicle)(column 3, line 43 to column 4, line 28; column 9, lines 29-42 ).

16. Regarding Claim 14, Fischer discloses one of the at least two driving modes comprises a sport-driving mode (column 3, line 43 to column 4, line 28; column 9, lines 29-42).

17. Regarding Claim 15, Fischer discloses one of the at least two driving modes comprises a normal driving mode (column 3, line 43 to column 4, line 28; column 9, lines 29-42).

18. Regarding Claim 16, Fischer discloses one of the at least two driving modes comprises a sport-driving mode and one of the at least two driving modes comprises a normal driving mode (column 3, line 43 to column 4, line 28; column 9, lines 29-42).

19. Regarding Claim 17, Fischer discloses the selecting one of at least two modes of noise attenuation signal generation comprises comparing the determined engine speed data and engine load data with engine speed data and engine load data related to each of the at least two modes of noise attenuation signal generation (Figs. 1, 3, and 5; column 3, line 43 to column 4, line 28; column 9, lines 29-42).

### ***Response to Arguments***

20. Applicant's arguments with respect to claims 1-17 have been considered but are moot in view of the new ground(s) of rejection.

**Conclusion**

21. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Corey P. Chau whose telephone number is (571)272-7514. The examiner can normally be reached on Monday - Friday 9:00 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tran Sinh can be reached on (571)272-7564. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

May 31, 2005

  
XU MEI  
PRIMARY EXAMINER